

IC 20-42

ARTICLE 42. FIDUCIARY FUNDS AND ACCOUNTS

IC 20-42-1

Chapter 1. Administration of Common School Fund by County

IC 20-42-1-1

Application

Sec. 1. This chapter applies to a county that has not:

- (1) transferred the money in the county's fund to the debt service funds of the school corporations in the county under section 5 of this chapter, IC 21-2-4-5 (before its repeal), or a predecessor law; or
- (2) surrendered the money in the county's fund to the treasurer of state under section 6 of this chapter, IC 21-1-3-1 (before its repeal), or a predecessor law.

As added by P.L.2-2006, SEC.165.

IC 20-42-1-2

"Fund"

Sec. 2. As used in this chapter, "fund" refers to a common school fund administered by a county.

As added by P.L.2-2006, SEC.165.

IC 20-42-1-3

Sources of fund

Sec. 3. The funds that:

- (1) before March 6, 1865, were:
 - (A) known and designated as the surplus revenue funds;
 - (B) appropriated to common schools;
 - (C) known and designated as the saline fund;
 - (D) known and designated as the bank-tax fund;
 - (E) derived from the sale of county seminaries and property belonging to county seminaries or after March 5, 1865, are derived from the sale of county seminaries and property belonging to county seminaries; or
 - (F) money and property held for county seminaries;
- (2) are derived from fines assessed for breaches of the penal laws of the state;
- (3) are derived from forfeitures that accrue;
- (4) are derived from lands and other estate that escheat to the state for want of heirs or kindred entitled to the inheritance of the lands or other estate;
- (5) are derived from lands that:
 - (A) were granted before March 6, 1865; or
 - (B) are granted after March 5, 1865;to the state, if no special object is expressed in the grant;
- (6) are derived from the proceeds of the sales of the swamp lands granted to the state of Indiana by the act of Congress of September 1850;

(7) are derived from the taxes that are assessed periodically upon the property of corporations for common school purposes; and
(8) are derived from the one hundred and fourteenth section of the charter of the state bank of Indiana;
constitute the common school fund.
As added by P.L.2-2006, SEC.165.

IC 20-42-1-4

Prohibition on reducing principal of fund

Sec. 4. Subject to sections 5, 6 and 9 of this chapter, the fund shall never be diminished in amount.
As added by P.L.2-2006, SEC.165.

IC 20-42-1-5

Transfer of fund balance to debt service fund

Sec. 5. Any balance remaining in a fund shall be transferred to the debt service funds of the school corporations in the county. The amount transferred may be appropriated and paid to a school corporation's general fund.
As added by P.L.2-2006, SEC.165.

IC 20-42-1-6

Transfer of custody of fund balance to state

Sec. 6. (a) A county council may adopt a resolution to:

- (1) elect to surrender the custody of the fund; and
- (2) order the board of county commissioners, the county auditor, and the county treasurer to take any and all steps necessary to surrender the custody of a fund held in trust by the county.

If the county council adopts a resolution under this section, the amount of money distributed to and held in trust by the county is due and payable to the treasurer of state. A county council may elect whether the county shall surrender all or any part of the fund. If the county retains custody of any money in the fund, the county shall loan the money as otherwise provided by law. Any part of the money in the fund surrendered by the county shall be paid to the treasurer of state immediately after the election by the county council.

(b) Within ten (10) days after the passage of the resolution by a county council of a county electing to surrender the custody of the fund, the county auditor shall prepare and file with the board of commissioners of the county a report showing the following:

- (1) The total amount of the fund that has been entrusted to and is held in trust by the county.
- (2) The total amount of the funds that is loaned as provided by law.
- (3) The total amount of the fund, if any, loaned to the county and which loans are unpaid.
- (4) The total amount of the fund held in cash in the possession and custody of the county and that is not loaned.

(5) A separate schedule of past due loans. The schedule must show the unpaid balance of principal and the amount of delinquent interest due and unpaid on each delinquent loan.

(c) The board of county commissioners shall examine the reports, and, if found correct, the board of county commissioners shall order:

(1) that the report be entered on its records; and

(2) the county auditor to draw the county auditor's warrant, payable to the treasurer of state, for the amount of the fund that is not loaned and is held in cash in the custody and possession of the county as shown by the report.

The county auditor shall forward the warrants to the auditor of state together with a certified copy of the report. The county auditor shall also forward with the payment a certified copy of the resolution of the county council electing to surrender the custody of the fund or any part of the fund.

(d) After passage by the county council of a resolution electing to surrender the custody of the funds, no part of the fund that is in the custody of the county may be loaned by the county or by any official of the county. Except as provided in this subsection, all outstanding loans of the fund at the time of the passage of the resolution shall be collected when due. Any loan that comes due and payable after the passage of the resolution may be renewed for one (1) additional five (5) year period, on the application of the person owing the loan as provided by law. However, a loan that is more than one (1) year delinquent in payment of principal or interest at the time of the passage of the resolution of the county council may not be renewed.

(e) On:

(1) May 1 or November 1 immediately after the passage of the resolution electing to surrender the fund; and

(2) each May 1 and November 1 thereafter;

all the money collected and on hand that belongs to the fund shall be paid to the treasurer of state. If at the time for a semiannual payment the amount collected and paid to the treasurer of state when added to the amounts previously paid to the treasurer of state is less than the result determined by multiplying one-fortieth ($1/40$) of the amount of the fund held in trust at the time of the passage of the resolution by the number of semiannual payments that have occurred after the passage of the resolution, the county auditor shall draw the county auditor's warrant on the general fund of the county for an amount sufficient to pay to the treasurer of state the difference between the amount paid and the amount equal to the result of multiplying one-fortieth ($1/40$) of the amount of the fund held in trust at the time of the passage of the resolution by the number of semiannual payments that have occurred after the passage of the resolution.

(f) At the same time and in the same manner, there shall be paid to the treasurer of state interest to the date of the semiannual payment on the balance of the funds held in trust by the county from the immediately preceding October 31 or April 30 at the rate fixed by law. Whenever within the preceding six (6) months any payment of the fund has been made by the county to the treasurer of state, the

county shall also pay interest at the rate fixed by law on the amount of the payment to the date of receipt of the payment by the treasurer of state. If the amount collected as interest on the fund is not sufficient to make payment of interest to the treasurer of state, the county auditor shall draw the county auditor's warrant on the general fund of the county for an amount sufficient when added to the amount collected as interest on the fund to pay the interest due to the state.

(g) The board of county commissioners shall, in its annual budget estimate, include an estimate of the amount necessary to make the payments from the county general fund as required by this section, and the county council shall appropriate the amount of the estimate.

(h) A county is subrogated to all the rights and remedies of the state with respect to loans made from a fund held in trust by the county to the extent of any and all payments made from the county general fund under this chapter.

As added by P.L.2-2006, SEC.165.

IC 20-42-1-7

County liability for fund

Sec. 7. A county shall be held liable for the:

- (1) preservation of the part of the fund as is entrusted or has been entrusted to the county; and
- (2) payment of the annual interest on the fund at the rate established by law.

As added by P.L.2-2006, SEC.165.

IC 20-42-1-8

Deposit of interest in fund

Sec. 8. The payment of annual interest must be full and complete every year. The payment must appear in the county auditor's report to the state superintendent. The state superintendent shall, at any time when the state superintendent discovers from the report, or otherwise, that there is a deficit in the amount collected, for want of prompt collection or otherwise, direct the attention of the board of county commissioners and the county auditor to the fact. The board of commissioners shall provide for the deficit in their respective counties.

As added by P.L.2-2006, SEC.165.

IC 20-42-1-9

Required transfer of revenue to state

Sec. 9. (a) This section does not apply to a fund entrusted to a county before November 1, 1851.

(b) Loans may not be made of the principal of the common school funds held in trust by the several counties of the state. Each county auditor and treasurer shall forward semiannually all payments made and all interest collected on any loan made before March 7, 1953, by any county from the fund, to the treasurer of state. The amount transferred to the treasurer of state must be held under IC 20-49-3.

As added by P.L.2-2006, SEC.165.

IC 20-42-1-10

Loans; required interest rate

Sec. 10. Subject to section 9 of this chapter, the:

- (1) principal belonging to a fund; and
 - (2) accumulations to the principal of a fund held by a county;
- must be loaned at four percent (4%) per annum. Loans made before June 1, 1943, with a rate of interest higher than four percent (4%) per annum must have an interest rate of four percent (4%) per annum.

As added by P.L.2-2006, SEC.165.

IC 20-42-1-11

Minimum balance; loans; maximum term

Sec. 11. In a county where the total amount in the:

- (1) fund; or
 - (2) congressional township school fund;
- accumulates to the amount of at least one thousand dollars (\$1,000), a county may borrow and use the funds or any part of the funds for any lawful purpose for a period not exceeding five (5) years.

As added by P.L.2-2006, SEC.165. Amended by P.L.162-2006, SEC.40.

IC 20-42-1-12

Form of loan agreement

Sec. 12. (a) If a county council borrows funds under this chapter, the county council shall adopt an ordinance specifying the amount of the funds to be borrowed and specify the time for which the loan will be made. The board of county commissioners shall execute to the state of Indiana for the use of the funds a written obligation, executed by the board of county commissioners and attested by the county auditor, that specifies the following:

- (1) The facts under which the written obligation is executed.
 - (2) The sum of money borrowed.
 - (3) The time when the money will be repaid to the fund by the county.
- (b) The obligation must be deposited with the county auditor of the county. The county auditor shall retain the obligation and record entries concerning the loans. The provisions of IC 6-1.1-20 concerning the loan to the county from the school funds apply to this section.

As added by P.L.2-2006, SEC.165.

IC 20-42-1-13

Distribution of loaned amount from fund

Sec. 13. After the obligation is deposited with the county auditor under section 12 of this chapter, the county auditor shall issue a warrant to the county treasurer, to be paid to the county for the amount of money specified in the ordinance and obligation. When the warrant is presented to the county treasurer, the treasurer shall

transfer from the fund the amount contained in the warrant from the principal sum of the fund to the credit of the county revenue of the county. Funds transferred under this section become a part of the general revenue funds of the county.

As added by P.L.2-2006, SEC.165.

IC 20-42-1-14

Investments

Sec. 14. (a) If the funds remain in the county treasury of the county for four (4) months without having been loaned under this chapter, upon the request of the county auditor, the board of county commissioners may, by an order entered of record, direct the county treasurer to invest the funds in:

- (1) bonds, notes, certificates, and other valid obligations of the United States; and
- (2) bonds, notes, debentures, and other securities issued by any federal instrumentality that are fully guaranteed by the United States.

(b) If it becomes necessary to obtain the funds invested in the government bonds under subsection (a) to be able to make a loan to any borrower, whose application has been approved and granted, the treasurer shall sell, at the earliest opportunity, a sufficient amount of the government bonds to make the loan.

As added by P.L.2-2006, SEC.165.

IC 20-42-1-15

Receipts for payment of principal or interest on loan

Sec. 15. (a) All payments of principal or interest must be paid to the county treasurer. The:

- (1) county treasurer shall file a receipt with the county auditor; and
- (2) county auditor shall give the payor a receipt and record the payment.

(b) The county auditor may accept payment of principal or interest if the county auditor can immediately transmit and pay the payment to the county treasurer.

As added by P.L.2-2006, SEC.165.